

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Edward Smith,
Petitioner

vs

Case No. 1:01cv814
(Dlott, J.; Black, M.J.)

Anthony Brigano,
Respondent

ORDER

On September 2, 2004, this Court issued an order adopting the magistrate's report and recommendation recommending that the petitioner's petition for habeas corpus pursuant to 28 U.S.C. § 2254 be denied. (Doc. 25). The Court also denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*, certifying that an appeal of its order would not be taken in good faith. (*Id.*). On September 24, 2004, this Court denied petitioner's motions for reconsideration on the ground that petitioner based his motions on the same arguments previously rejected by this Court. (Doc. 31). On October 28, 2004, petitioner filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit from this Court's two orders. (Doc. 37). This matter is now before the Court on petitioner's motion for leave to proceed *in forma pauperis* on appeal. (Doc. 36).

Pursuant to 28 U.S.C. § 1915(a), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. This Court previously certified that any appeal from the order denying the petition would not be

taken in good faith for purposes of allowing petitioner to proceed on appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See* Fed. R. App. P. 24 (a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Since petitioner raised the same issues in his motions for reconsideration that were originally presented to this Court, this Court also certifies that any appeal from the order denying petitioner's motions for reconsideration would not be taken in good faith for purposes of allowing petitioner to proceed on appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Accordingly, petitioner's motion for leave to proceed *in forma pauperis* on appeal (Doc. 36) is hereby DENIED. Petitioner remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See* Fed. R. App. P. 24 (a) (5).

Date: _____
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s/Susan J. Dlott
Susan J. Dlott, Judge
United States District Court